

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

AMERICAN GENERAL LIFE INSURANCE
COMPANY,

Plaintiff,

v.

ESPERANZA VARGAS VOGEL and
MONICO RODRIGUEZ, as Trustee of the
Esperanza Vargas Special Needs Trust,

Defendants.

Case No. 1:21-cv-00762-DAD-SKO

**FINDINGS AND RECOMMENDATION
THAT PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT BE
DENIED**

(Doc. 15)

OBJECTIONS DUE: 21 DAYS

**ORDER DENYING MOTION FOR
LEAVE TO DEPOSIT FUNDS INTO
THE REGISTRY OF THE COURT**

(Doc. 14)

I. INTRODUCTION

On November 2, 2021, Plaintiff American General Life Insurance Company ("Plaintiff") filed a motion for leave to deposit funds into the registry of the Court pursuant to Fed. R. Civ. P. 67 (Doc. 14) and a motion for default judgment against Defendants Esperanza Vargas Vogel ("Defendant Vogel") and Monico Rodriguez ("Defendant Rodriguez"), as Trustee of the Esperanza Vargas Special Needs Trust (collectively, "Defendants"), pursuant to Fed. R. Civ. P. 55(b)(2) (Doc. 15). No opposition to either motion has been filed. (*See* Docket.)

After having reviewed the papers and supporting material, the matter was deemed suitable for decision without oral argument pursuant to E.D. Cal. Local Rule 230(g), and the Court vacated the hearing set for December 8, 2021. (Doc. 16.) For the reasons set forth below, the undersigned recommends that the motion for default judgment be denied, and the Court denies the motion for leave to deposit funds.¹

II. FACTUAL BACKGROUND²

On May 12, 2021, Plaintiff filed this diversity action seeking a declaration pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, of the proper direction of payments due under an annuity contract. (Doc. 1 (Compl.)) Plaintiff's predecessor-in-interest issued Annuity No. 404138 effective October 1, 2000, under which Defendant Vogel (formerly known as "Esperanza Rodriguez-Vargas"), is the annuitant and measuring life (the "Annuity"). (Compl. ¶ 1.) The Annuity was issued in accordance with a Release in Full of All Claims and Rights (the "Settlement Agreement") and Order Approving Petition for Leave to Compromise Claim of Minor ("Approval Order") entered in *Antonia Rodriguez, et al., v. County of Stanislaus, et al.*, Case No. 148369, in the Superior Court of the State of California, Stanislaus County (the "Underlying Action"). (*Id.* See also Doc. 1-3.)

In accordance with the Settlement Agreement and Approval Order, the Annuity directs certain guaranteed payments to be made as follows (the "Annuity Payments"):

- monthly payments of \$300.00 each, commencing November 1, 2000 through and including April 1, 2014;
- semi-annual payments of \$12,500.00 each, commencing July 1, 2014 through and including January 1, 2019;
- monthly payments of \$1,000.00 each, commencing July 1, 2014 through and

¹ The motion for default is referred to the undersigned by E.D. Cal. Local Rule 302(c)(19) for the entry of findings and recommendations. See 28 U.S.C. § 636(b)(1)(B). The motion for leave to deposit funds into the registry of the Court is to be resolved by the undersigned by way of order, pursuant to Local Rule 150(a).

² Upon entry of default, "the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987) (quoting *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977)); see also Fed. R. Civ. P. 8(b)(6) ("An allegation—other than one relating to the amount of damages — is admitted if a responsive pleading is required and the allegation is not denied."). Accordingly, the factual background is based on the allegations of the complaint.

1 including June 1, 2019;

- 2 • one lump sum payment of \$50,000.00 due on April 11, 2021;
- 3 • one lump sum payment of \$75,000.00 due on April 11, 2026;
- 4 • one lump sum payment of \$150,000.00 due on April 11, 2031;
- 5 • one lump sum payment of \$275,000.00 due on April 11, 2036;
- 6 • one lump sum payment of \$500,000.00 due on April 11, 2041; and
- 7 • one lump sum payment of \$868,825.00 due on April 11, 2046.

8 (Compl. ¶ 13; Doc. 1-1 at 3, 8; Doc. 1-3 at 2–3.)

9 The Settlement Agreement was executed by Defendant Rodriguez, the maternal grandfather
10 of Defendant Vogel, as “Guardian ad Litem of Plaintiff Esperanza Rodriguez.” (Compl. ¶ 16.) The
11 Settlement Agreement does not define the Annuity’s payee. (*Id.*) According to the assignment
12 executed by the defendants in the Underlying Action, through which they assigned their obligation
13 to make future payments in settlement of Defendant Vogel’s claim in that Action, Defendant Vogel
14 (listed as “Esperanza Rodriguez-Vargas”) is the “claimant” of these payments, which are to be made
15 “for” her. (Compl. ¶ 15; Doc. 1-2.)

16 In moving for court approval of the settlement in the Underlying Action, Defendant
17 Rodriguez filed a petition requesting that the court approve a special needs trust that would allow
18 Defendant Vogel to continue to receive federal and state benefits. (Compl. ¶ 17.) The Trust
19 Agreement and Special Needs Trust (the “Trust”) submitted to the court in the Underlying Action
20 provides that (1) Defendant Rodriguez shall serve as trustee and (2) that “[t]he trust corpus shall
21 consist of a structured annuity, and [] the right, during the lifetime of [Defendant Vogel] to receive
22 the periodic payments . . . to be held in irrevocable trust for the special needs of [Defendant Vogel].”
23 (*Id.*) The Trust further provides for termination in the event of Defendant Vogel’s death or early
24 termination by court order. (*Id.*)

25 In or around 2019, Defendant Vogel alleged that Defendant Rodriguez, as trustee of the
26 Trust, had “engaged in misconduct and mismanagement of trust assets.” (Compl. ¶ 20.) According
27 to Plaintiff, Defendant Vogel “considered the Trust terminated but, despite request, was not able to
28 procure or provide a copy of an order terminating the Trust.” (*Id.*)

1 In April 2021, Defendant Vogel informed Plaintiff that the Trust “remains in effect but that
 2 [Defendant] Vogel desires to terminate it.” (Compl. ¶ 21.) To date, Plaintiff has not received
 3 confirmation that the Trust has been terminated or that judicial action has been taken with respect
 4 to Defendant Vogel’s assertions of trustee misconduct. (*Id.* ¶ 22.) Plaintiff placed a hold on the
 5 Annuity Payments effective as of the April 11, 2021 payment. (*Id.* ¶ 23.)

6 On May 12, 2021, Plaintiff filed this action in diversity seeking an order, pursuant to the
 7 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and Fed. R. Civ. P. 57, determining the proper
 8 direction of the held and remaining payments due under the Annuity and a declaration as to whether
 9 Defendant Vogel or Defendant Rodriguez, as trustee of the Trust if in force, should be the payee of
 10 the held and remaining Annuity Payments. (Compl. ¶ 25; *id.* at p. 7 (“Request for Relief”).) As set
 11 forth in the Complaint, Plaintiff is legally obligated under the terms of the Annuity to remit each
 12 payment, as it becomes due, to the proper payee; however, Plaintiff is unable to determine the proper
 13 direction and/or payee of the Annuity Payments. (Compl. ¶ 27.)

14 III. PROCEDURAL BACKGROUND

15 Both Defendants returned executed waivers of service of summons: Defendant Vogel
 16 executed her waiver on June 28, 2021, and Defendant Rodriguez’s waiver was executed on August
 17 2, 2021 (Doc. 8), by Dominga Rodriguez, who was appointed power of attorney for Defendant
 18 Rodriguez in March 2021 (Doc. 10.) Neither Defendant has filed an answer nor taken any action
 19 indicating that they intend to defend this suit.

20 Plaintiff requested entry of default against Defendants on October 5, 2021 (Doc. 12), which
 21 was entered by the Clerk of Court on October 6, 2021 (Doc. 13). Plaintiff filed the present motion
 22 for default judgment on November 2, 2021, requesting entry of a default judgment order (1)
 23 awarding costs amount of \$664.56 to be deducted from the Annuity Payments; (2) deeming Plaintiff
 24 and its affiliates and agents “fully and finally discharged from any further liability arising out of or
 25 relating to the Annuity or Annuity Payments”; and (3) dismissing with prejudice “[a]ny and all
 26 claims, demands, debts, or causes of action arising out of or relating to the Annuity or Annuity
 27 Payments that could have been asserted herein against American General by Defendants.” (Doc.
 28 15-1 at 9–10.) Also pending is Plaintiff’s separate motion, filed that same day, for an order granting

1 Plaintiff “leave to deposit into the registry of the Court the held Annuity Payment in the amount of
 2 \$50,000.00 and each remaining Annuity Payment, as it becomes due under the schedule set forth in
 3 the Annuity, until further order of this Court.” (Doc. 14-1 at 5.)

4 IV. DISCUSSION

5 A. Motion for Default Judgment

6 1. Legal Standard

7 A court may enter judgment against parties whose default has been taken pursuant to Rule
 8 55(b). *See PepsiCo, Inc. v. California Security Cans*, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002);
 9 *Kloepping v. Fireman’s Fund*, No. C 94–2684 TEH, 1996 WL 75314, at *2 (N.D. Cal. Feb. 13,
 10 1996). Once a party’s default has been entered, the factual allegations in the complaint, except those
 11 concerning damages, are deemed to have been admitted by the non-responding party. *See Fed. R.*
 12 *Civ. P. 8(b)(6); Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977) (stating the general
 13 rule that “upon default[,] the factual allegations of the complaint, except those relating to the amount
 14 of damages, will be taken as true”); *see also DirectTV v. Huynh*, 503 F.3d 847, 851 (9th Cir. 2007);
 15 *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987). The court must still
 16 “consider whether the unchallenged facts constitute a legitimate cause of action, since a party in
 17 default does not admit mere conclusions of law.” 10A Charles Alan Wright, Arthur R. Miller, &
 18 Mary Kay Kane, *FEDERAL PRACTICE AND PROCEDURE: CIVIL 3D* § 2688, at 63 (1998) (footnote
 19 omitted); *see also Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir.1992)
 20 (“[N]ecessary facts not contained in the pleadings, and claims which are legally insufficient, are not
 21 established by default”); *Doe v. Qi*, 349 F. Supp. 2d 1258, 1272 (N.D.Cal.2004) (“[Although] the
 22 factual allegations of [the] complaint together with other competent evidence submitted by the
 23 moving party are normally taken as true . . . this Court must still review the facts to insure that the
 24 Plaintiffs have properly stated claims for relief”).

25 If the court determines that the allegations in the complaint are sufficient to establish
 26 liability, it must then determine the “amount and character” of the relief that should be awarded.
 27 *See Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 920 (C.D. Cal. 2010) (quoting
 28 *FEDERAL PRACTICE AND PROCEDURE: CIVIL 3D* § 2688, at 63).

a. Procedural Requirements

Before a court can enter default judgment against a defendant, the plaintiff must satisfy the procedural requirements for default judgments set forth in Rules 54(c) and 55 of the Federal Rules of Civil Procedure. Rule 54(c) states that “judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment.” Fed. R. Civ. P. 54(c). Rule 55(a) provides that the clerk must enter default “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise.” Fed. R. Civ. P. 55(a).

b. Substantive Requirements

Granting or denying default judgment is within the court’s sound discretion. *Draper v. Coombs*, 792 F.2d 915, 924–25 (9th Cir. 1986); *Aldabe v. Aldabe*, 616 F.2d. 1089, 1092 (9th Cir. 1980). The court is free to consider a variety of factors in exercising its discretion. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). Among the factors that may be considered by the court are (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits (together, the “*Eitel* factors”). *Id.* at 1471–72

The Ninth Circuit has identified seven factors (together, the “*Eitel* factors”) that a court considers when determining whether to grant a default judgment: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff’s substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at issue; (5) the possibility of a dispute regarding material facts; (6) the strong policy favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

On an application for a default judgment, the factual allegations in the complaint are taken as true, with the exception of those regarding damages. *See TeleVideo Sys., Inc.*, 826 F.2d at 917–18 (quoting *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977)); *see also* Fed. R. Civ. P. 8(b)(6) (“An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied.”). “[N]ecessary facts not contained

1 in the pleadings, and claims which are legally insufficient, are not established by default.” *Cripps*
2 *v. Life Ins. Co.*, 980 F.2d 1261, 1267 (9th Cir. 1992). “A default judgment must not differ in kind
3 from, or exceed in amount, what is demanded in the pleadings.” Fed. R. Civ. P. 54(c).

4 **2. Analysis**

5 **a. Procedural Requirements**

6 Plaintiff’s motion does not satisfy the procedural requirements for a default judgment
7 because its requested relief is different from that pleaded in the Complaint. Specifically, Plaintiff
8 requests entry of a default judgment order releasing it “and its affiliates and agents” from “further
9 liability arising out of or relating to the Annuity or Annuity Payments” and the dismissal with
10 prejudice of “[a]ny and all claims, demands, debts, or causes of action arising out of or relating to
11 the Annuity or Annuity Payments that could have been asserted” by Defendants in this lawsuit (Doc.
12 15-1 at 9–10). However, Plaintiff pleads in its Complaint for a declaration determining whether
13 Defendant Vogel or Defendant Rodriguez, as trustee, should be the payee of the Annuity Payments.
14 (Compl. ¶ 25; *id.* at p. 7 (“Request for Relief”).) Because a default judgment releasing Plaintiff (and
15 its affiliates and agents) from liability and the dismissal with prejudice of present and future claims
16 would “differ in kind from . . . what is demanded in the pleadings,” the undersigned recommends
17 that Plaintiff’s request for declaratory judgment be denied for this reason. *See* Fed. R. Civ. P. 54(c);
18 *Fong v. United States*, 300 F.2d 400, 413 (9th Cir. 1962). *See also Trustees of Const. Indus. &*
19 *Laborers Health & Welfare Tr. v. Ramco Masonry, Inc.*, No. 2:06-CV-00347-LRHVPC, 2007 WL
20 2248069, at *1 (D. Nev. Aug. 2, 2007) (denying the plaintiffs’ application for default judgment
21 because it “requests relief wholly different than that prayed for in their complaint.”).

22 **b. Substantive Requirements**

23 The *Eitel* factors also weigh against granting Plaintiff’s motion.

24 Taken together, the second and third factors, related to the substantive claims pleaded in the
25 complaint as well as its general sufficiency, address whether the complaint is sufficient to state a
26 claim that supports the relief sought. *See Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978);
27 *see also DirecTV, Inc. v. Huynh*, 503 F.3d 847, 854 (9th Cir. 2007). Here, the Complaint pleads a
28 single claim for declaratory relief under the Declaratory Judgment Act. The Act provides that

1 district courts, “[i]n a case of actual controversy within in its jurisdiction[,] . . . may declare the
 2 rights and other legal relations of any interested party seeking such declaration, whether or not
 3 further relief is or could be sought.” 28 U.S.C. § 2201(a). A claim for declaratory judgment must
 4 be supported by sufficient factual allegations to state a claim for relief. *See Power Probe, Inc. v.*
 5 *Sullivan*, Case No. 15–cv–01404–JLS, 2016 WL 7496841, at *2 (C.D. Cal. Feb. 23, 2016).

6 While the Complaint alleges sufficient facts for the Court to determine that a controversy
 7 exists as to the proper direction of the current and future Annuity Payments, the Complaint does not
 8 contain any factual allegations as to who is the proper payee. Even given Defendant Vogel’s
 9 allegations of “misconduct or mismanagement of trust assets” by Defendant Rodriguez as trustee of
 10 the Trust (Compl. ¶ 20), the Court cannot declare from this fact alone who is the proper payee of
 11 the current and future Annuity Payments, since there has been no determination that the allegations
 12 are true. That Defendant Vogel “desires to terminate” the Trust is irrelevant to the determination of
 13 identity of the proper payee of the Annuity Payments, as, taking Plaintiff’s allegations as true, the
 14 Trust remains in effect. (*See id.* ¶ 21.) “The dearth of factual allegations supporting any specific
 15 declaratory relief cautions against granting default judgment.” *Helwan Cement S.A.E. v. Tahaya*
 16 *Misr Inv. Inc.*, No. 2:17-cv-00543-CAS (AFMx), 2017 WL 2468775, at *4 (C.D. Cal. June 5, 2017).

17 It is for this same reason that the fifth *Eitel* factor also weighs heavily against the issuance
 18 of a default judgment. As the Court has no basis for reaching any conclusion about the relevant
 19 material facts, there is a high possibility that there would be a dispute about these facts if the Court
 20 issued a declaratory judgment based on this default. *See Al Aqeelah Int’l Real Est. Co. v. DACA*
 21 *Castaic, LLC*, No. CV 21-2141 JVS (JEMx), 2021 WL 2953173, at *3 (C.D. Cal. May 5, 2021)
 22 (denying motion for default judgment). The sixth factor, the strong policy favoring decisions on the
 23 merits, similarly weighs against entry of a default judgment, particularly where there is a dearth of
 24 factual allegations. *See id.*

25 c. Nature of the Relief Sought

26 Finally, the terms of the declaratory judgment sought in the motion for default judgment do
 27 not support awarding such relief. As explained by the Ninth Circuit,
 28

1 The two principal criteria guiding the policy in favor of rendering declaratory
2 judgments are (1) when the judgment will serve a useful purpose in clarifying and
3 settling the legal relations in issue, and (2) when it will terminate and afford relief
4 from the uncertainty, insecurity, and controversy giving rise to the proceeding. It
5 follows that when neither of these results can be accomplished, the court should
6 decline to render the declaration prayed.

7 *McGraw-Edison Co. v. Preformed Line Prod. Co.*, 362 F.2d 339, 342 (9th Cir. 1966) (quoting
8 BORCHARD, DECLARATORY JUDGMENTS, 299 (2d ed.1941)). The discretion “must be exercised by
9 the trial court with a view to the complete solution of the differences between the litigants.” *Taiwan*
10 *C.R. Litig. Org. v. Kuomintang Bus. Mgmt. Comm.*, No. C 10-0362 VRW, 2011 WL 13376927, at
11 *4 (N.D. Cal. Jan. 18, 2011) (quoting *Prod. Eng’g & Mfg., Inc. v. Barnes*, 424 F.2d 42, 44 (10th
12 Cir. 1970)).

13 These considerations require that the court deny Plaintiff’s request for a declaratory
14 judgment at this juncture. Among other things, a declaration of the sort requested by Plaintiff in its
15 motion, *i.e.*, a release of liability and dismissal of claims, would not result in any final determination
16 of the rights of the parties, as the question of who the proper payee of the Annuity Payments is
17 would remain uncertain. *See Taiwan C.R. Litig.*, 2011 WL 13376927, at *4. Moreover, it is unclear
18 how this Court could, absent agreement by Defendants, “dismiss with prejudice” claims that are not
19 currently part of this lawsuit.

20 In sum, the undersigned finds that default judgment is not appropriate in this case. Four of
21 the *Eitel* factors weigh against granting the motion. Without a factual record, the Court is not able
22 to enter a declaratory judgment as to the proper direction of the held and remaining payments due
23 under the Annuity. There is no evidence that allow the Court to determine whether Defendant
24 Vogel, Defendant Rodriguez, as trustee of the Trust, or a third party, should be the payee of the held
25 and remaining Annuity Payments. *See Al Aqeelah Int’l*, 2021 WL 2953173, at *3. Furthermore,
26 the declaratory judgment relief requested in the motion fails to comply with Rule 54(c) because it
27 differs from the Complaint, and it does not advance the policy in favor of awarding declaratory relief
28 because it does not “serve a useful purpose in clarifying and settling the legal relations in issue.”
McGraw-Edison Co., 362 F.2d at 342. For these reasons, the undersigned recommends that
Plaintiff’s motion for default judgment be denied.

B. Motion for Leave to Deposit Funds

Plaintiff moves the Court, pursuant to Federal Rule of Civil Procedure 67, for leave to deposit into the registry of the Court “the held Annuity Payment in the amount of \$50,000.00 and each remaining Annuity Payment, as it becomes due under the schedule set forth in the Annuity, until further order of this Court.” (Doc. 14-1 at 5.)

1. Legal Standard

Federal Rule of Civil Procedure 67(a) provides, in pertinent part:

If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party—on notice to every other party and by leave of court—may deposit with the court all or part of the money or thing, whether or not that party claims any of it.

Rule 67 relieves a party of the responsibility for disputed funds, until the Court determines how the funds should be divided. *Qwest Corp. v. City of Portland*, 204 F.R.D. 468, 470 (D. Or. 2001). *Accord Alstom Caribe, Inc. v. Geo. P. Reintjes Co.*, 484 F.3d 106, 113 (1st Cir. 2007) (“The core purpose of Rule 67 is to relieve a party who holds a contested fund from responsibility for disbursement of that fund amount those claiming some entitlement thereto.”)).

Whether Rule 67 relief should be available is a matter within the discretion of the court. *United States Fire Ins. Co. v. Icicle Seafoods, Inc.*, No. 2:20-CV-401-RSM-DWC, 2020 WL 5526686, at *2 (W.D. Wash. Sept. 15, 2020) (citing *Cajun Elec. Power Coop. v. Riley Stoker Corp.*, 901 F.2d 441, 445 (5th Cir. 1990)). “In deciding whether to exercise their discretion, federal courts have looked to whether the amount sought to be deposited was definite; whether the funds could be deposited all at once or whether there would be repeated deposits that would impose an undue burden on the clerk of court; and whether the party seeking leave to deposit the funds had demonstrated a likelihood of success on the merits.” *Icicle Seafoods, Inc.*, 2020 WL 5526686, at *2 (quoting *Kansas City S. Ry. Co. v. Borrowman*, No. 09-3094, 2009 WL 3188305, at *4 (C.D. Ill. Sept. 30, 2009)).

2. Analysis

Considering the factors identified in *Icicle Seafoods*, the Court finds that the motion for leave to deposit funds should be denied. Given the Annuity Payments are to be made on a schedule and

not all at once, the Clerk of Court will be unduly burdened by the repeated deposits. *See Bank of New York Mellon as Tr. for Certificateholders of CWALT, Inc., Alternative Loan Tr. 2007-12T1, Mortg. Pass-Through Certificates, Series 2007-12T1 v. Meister Park Homeowners Ass'n*, No. 2:16-cv-01969-GMN-GWF, 2021 WL 796138, at *2 (D. Nev. Mar. 2, 2021) (denying leave to deposit rental payments because they will “be deposited on numerous occasions” and burden the court clerk). In addition, the Court cannot conclude that Plaintiff has demonstrated a likelihood of success on the merits, for the reasons previously set forth. *See* Section A.1.b.2, *supra*.

V. ORDER AND RECOMMENDATION

In view of the foregoing, IT IS HEREBY ORDERED that Plaintiff American General Life Insurance Company’s motion for leave to deposit funds into the registry of the Court (Doc. 14) is DENIED.

Further, IT IS HEREBY RECOMMENDED that Plaintiff American General Life Insurance Company’s motion for default judgment (Doc. 15) be DENIED.

These findings and recommendation are submitted to the district judge assigned to this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within twenty-one (21) days of service of this recommendation, any party may file written objections to these findings and recommendations with the Court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” The district judge will review the magistrate judge’s findings and recommendation pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may waive the right to appeal the district judge’s order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

IT IS SO ORDERED.

Dated: December 22, 2021

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE